

SPECIAL CIVIL APPLICATION No 583 of 1999

Hon'ble MR.JUSTICE D.C.SRIVASTAVA sd/-

2. To be referred to the Reporter or not? No @@

5. Whether it is to be circulated to the Civil Judge?
No

Mr.A.B.Vyas, A.G.P. for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 03/03/99

ORAL JUDGEMENT

1. The grievance of the petitioner in this writ petition under Article 226 of the Constitution of India is that he has been illegally detained in pursuance of detention order dated 15.7.1998 passed by the Police Commissioner, Surat City, under Section 3(2) of the Prevention of Anti-social Activities Act (for short "PASA"). He has therefore prayed that the aforesaid order be quashed and he be released from illegal detention.

2. From perusal of grounds of detention it appears that because of involvement of the petitioner in three registered offences under the Bombay prohibition Act and further because of the statements of the two confidential witnesses against him that he was declared by the Detaining Authority to be a bootlegger. The detaining Authority found that his activities were prejudicial for maintenance of public order. Accordingly the impugned order of detention was passed.

3. The writ petition was filed in January, 1999. Time was given on 24.2.1999 on the request of learned A.G.P. to file counter Affidavit, but till date it has not been filed. He made further request for time to file counter affidavit which was opposed by the learned Counsel for the petitioner. Learned A.G.P. informs that since the Police Commissioner has been transferred hence the affidavit could not be filed. This information does not seem to be convincing because even according to the learned A.G.P. Police Commissioner was transferred from Surat to Gandhinagar in the month of December, 1998. There was thus enough time for filing counter affidavit, since it was not filed I proceed to decide this writ petition in the absence of counter Affidavit.

4. The grounds of detention have already been mentioned in brief earlier. The detention order has been challenged by the learned Counsel for the petitioner on three grounds.

5. One of the grounds is that representation dated 13.10.1998 has not been decided so far and as such the impugned order of detention is rendered illegal and invalid. No doubt counter Affidavit has not been filed, but from the office record the learned A.G.P. informs that representation dated 13.10.1998 was submitted by the

petitioner to the Jail Authority and the Jail Authority forwarded the same on 16.10.1998 to the State Government. The State Government, however, received the said representation only on 26.10.1998 and it was considered and rejected on 28.10.1998 and order of rejection was communicated through jail Authority on the same day. Thus the delay between 16.10.1998 to 26.10.1998 is not to be explained either by the jail Authority or by the State Government. The jail Authority performed its duty by forwarding the representation on 16.10.1998. The State Government received the same on 26.10.1998 and disposed it of within two days from the receipt of representation. There is thus no delay in deciding the representation by the State Government and therefore the impugned order cannot be said to be invalid on this grounds.

6. The next contention has been that from the compillation, especially page No.38, it seems that proceedings were initiated under Section 93 of the Bombay Prohibition Act for taking bail bond from the petitioner for keeping good behaviour and the said proceedings are pending and inspite of pendency of these proceedings the detaining Authority has passed the detention order which is invalid because lesser drastic remedy is already there which is being availed of by the competent Authority. In the absence of counter affidavit it can safely be presumed that Ground (F) of the petition on this point remains uncontroverted. If alternative remedy which is lesser drastic is being availed of against the petitioner there was hardly any occasion for passing drastic order in the nature of preventive detention and this has rendered subjective satisfaction of the detaining Authority illegal and on this ground the impugned order of detention is rendered invalid.

7. The last contention has been that the activities of the petitioner cannot be said to be prejudicial for maintenance of public order. Learned Counsel for the petitioner has not challenged the subjective satisfaction of the detaining Authority that the petitioner is a bootlegger. Registration of three cases under the Bombay Prohibition Act against the petitioner and confidential statements of two witnesses against him gave sufficient material to the detaining Authority to reach subjective satisfaction that the petitioner is a bootlegger.

8. A bootlegger can be detained under PASA only when his activities are found prejudicial for maintenance of public order. For this two materials were before the detaining Authority. The first was material relating to three registered cases under the Bombay Prohibition Act.

Brief account of the three registered offences has been given in the grounds of detention and from these accounts it can hardly be said that on these three occasions the petitioner created any situation which was prejudicial for maintenance of public order. He neither quarrelled with police staff nor created any situation in which public at large of the locality was affected. Consequently these three offences could not be pressed in service against the petitioner for reaching subjective satisfaction that his activities were prejudicial for maintenance of public order. The next material before the detaining Authority was statements of two confidential witnesses. The first witness stated about incident dated 14.5.1998 at 7.00 p.m. The petitioner asked the witness to keep stock of liquor with him, the witness refused whereupon the petitioner caught hold of the neck of the witness and beat him by kicks and fists. The witness tried to save himself. The people as well as pedestrian from the nearby locality gathered, some of them intervened, but on signal of petitioner to his colleagues who came with knife, etc. all persons who collected at the spot ran away. Atmosphere of terror was created.

9. The second incident took place on 18.6.1998 at 6.00 O'clock. It is not mentioned in the translation whether it was evening or morning time. The petitioner beat the witness on the suspicion that he was police informer. The people from nearby locality collected. They attempted to save the witness whereupon the petitioner and his companions ran towards them showing sword, hockey etc. and also threatened them to cut their neck if anybody came forward and thereupon atmosphere of terror was created. People of nearby locality closed their windows and doors due to fear.

10. A careful examination of these incidents would indicate that even within the extended meaning of public order as contained in Section 3(4) and Explanation to Sub.Section 4 of Section 3 of PASA it cannot be said that situation prejudicial for maintenance of public order created was on these two occasions. It were simply incidents between the petitioner and the witnesses. No doubt members of public collected but they were neither beaten nor any injury was caused to them. If they ran on imaginary fear it can hardly be said that even tempo of the life of the locality was disturbed or peace and tranquility in the area was disturbed. Consequently these two incidents also do not furnish material for arriving at subjective satisfaction that the activities of the petitioner on these two occasions were prejudicial

for maintenance of public order.

11. Since the activities of the petitioner cannot be said to be prejudicial for maintenance of public order the detention order is rendered invalid. On this ground the detention order has to be quashed. The petition therefore succeeds and is hereby allowed. The impugned order of detention dated 15.7.1998 is hereby quashed. The petitioner shall be released forthwith unless wanted in some other case.

sd/-

Date : March 03, 1999 (D. C. Srivastava, J.)

sas